

**Senator Carlene M. Walker** proposes the following substitute bill:

**ADOPTION AND TERMINATION OF**

**PARENTAL RIGHTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Sheryl L. Allen**

Senate Sponsor: Carlene M. Walker

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**LONG TITLE**

**General Description:**

This bill amends provisions of the Utah Health Code, the Utah Criminal Code, and the Judicial Code, relating to adoption and the termination of parental rights.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides that a child-placing agency has a direct, tangible, and legitimate interest in the vital records of a child that has been placed with the agency pending finalization of an adoption;
- ▶ modifies and clarifies the definition of "adoption related expenses" that a person may pay or accept without committing the crime of "sale of a child";
- ▶ amends the offense of "sale of a child" to make it a third degree felony to offer to sell or dispose of a child, or to give, or attempt to give, money or another thing of value to a person with the intent to induce the person to sell or dispose of a child;
- ▶ makes incarceration for a felony a factor that a court must consider in determining whether a parent is unfit or has neglected a child, regardless of whether the child is in the custody of the Division of Child and Family Services;



- 26           ▶ modifies requirements relating to taking consents and relinquishments for adoption;
- 27           ▶ clarifies which code provisions must be complied with in order for a court to waive
- 28 the requirement that adoptive parents and the child to be adopted appear before the
- 29 court prior to entry of a final decree of adoption;
- 30           ▶ requires a child-placing agency and a petitioner for adoption to comply with the
- 31 Indian Child Welfare Act in an adoption proceeding involving an "Indian child";
- 32 and
- 33           ▶ makes technical changes.

34 **Monies Appropriated in this Bill:**

35           None

36 **Other Special Clauses:**

37           This bill coordinates with S.B. 111, Revisor's Statute, by providing technical

38 amendments.

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41           **26-2-22**, as last amended by Laws of Utah 2006, Chapters 55 and 56
- 42           **76-7-203**, as last amended by Laws of Utah 2005, Chapter 137
- 43           **78A-6-508**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 44           **78B-6-103**, as enacted by Laws of Utah 2008, Chapter 3
- 45           **78B-6-105**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 46           **78B-6-107**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 47           **78B-6-124**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 48           **78B-6-128**, as enacted by Laws of Utah 2008, Chapter 3
- 49           **78B-6-129**, as enacted by Laws of Utah 2008, Chapter 3
- 50           **78B-6-134**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 51           **78B-6-136**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 52           **78B-6-143**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 53           **78B-6-144**, as renumbered and amended by Laws of Utah 2008, Chapter 3



55 *Be it enacted by the Legislature of the state of Utah:*

56           Section 1. Section **26-2-22** is amended to read:

57 **26-2-22. Inspection of vital records.**

58 (1) (a) The vital records shall be open to inspection, but only in compliance with the  
59 provisions of this chapter, department rules, and Section ~~[78-30-18]~~ 78B-6-144.

60 (b) It is unlawful for any state or local officer or employee to disclose data contained in  
61 vital records contrary to this chapter or department rule.

62 (c) A custodian of vital records may permit inspection of a vital record or issue a  
63 certified copy of a record or a part of a record when the custodian is satisfied that the applicant  
64 has demonstrated a direct, tangible, and legitimate interest.

65 (2) A direct, tangible, and legitimate interest in a vital record is present only if:

66 (a) the request is from:

67 (i) the subject;

68 (ii) a member of the subject's immediate family;

69 (iii) the guardian of the subject;

70 (iv) a designated legal representative of the subject; or

71 (v) a person, including a child-placing agency as defined in Section 78B-6-103, with  
72 whom a child has been placed pending finalization of an adoption of the child;

73 (b) the request involves a personal or property right of the subject of the record;

74 (c) the request is for official purposes of a state, local, or federal governmental agency;

75 (d) the request is for a statistical or medical research program and prior consent has  
76 been obtained from the state registrar; or

77 (e) the request is a certified copy of an order of a court of record specifying the record  
78 to be examined or copied.

79 (3) For purposes of Subsection (2):

80 (a) "immediate family member" means a spouse, child, parent, sibling, grandparent, or  
81 grandchild;

82 (b) a designated legal representative means an attorney, physician, funeral service  
83 director, genealogist, or other agent of the subject or the subject's immediate family who has  
84 been delegated the authority to access vital records;

85 (c) except as provided in Title 78, Chapter 30, Adoption, a parent, or the immediate  
86 family member of a parent, who does not have legal or physical custody of or visitation or  
87 parent-time rights for a child because of the termination of parental rights pursuant to Title 78,

88 Chapter 3a, Juvenile Court Act of 1996, or by virtue of consenting to or relinquishing a child  
89 for adoption pursuant to Title 78, Chapter 30, Adoption, may not be considered as having a  
90 direct, tangible, and legitimate interest; and

91 (d) a commercial firm or agency requesting names, addresses, or similar information  
92 may not be considered as having a direct, tangible, and legitimate interest.

93 (4) Upon payment of a fee established in accordance with Section 63-38-3.2, the  
94 following records shall be available to the public:

95 (a) except as provided in Subsection 26-2-10(4)(b), a birth record, excluding  
96 confidential information collected for medical and health use, if 100 years or more have passed  
97 since the date of birth;

98 (b) a death record if 50 years or more have passed since the date of death; and

99 (c) a vital record not subject to Subsection (4)(a) or (b) if 75 years or more have passed  
100 since the date of the event upon which the record is based.

101 Section 2. Section **76-7-203** is amended to read:

102 **76-7-203. Sale of child -- Felony -- Payment of adoption related expenses.**

103 (1) For purposes of this section:

104 (a) "[~~adoption~~] Adoption related expenses" means expenses that:

105 (i) are reasonably related to the adoption of a child;

106 (ii) are incurred for a reasonable amount; and

107 (iii) may include expenses:

108 (A) of the mother or father of the child being adopted, including:

109 (I) legal expenses;

110 (II) maternity expenses;

111 (III) medical expenses;

112 (IV) hospital expenses;

113 (V) counseling expenses;

114 (VI) temporary living expenses during the pregnancy or confinement of the mother; or

115 (VII) expenses for travel between the mother's or father's home and the location where  
116 the child will be born or placed for adoption; [~~or~~]

117 (B) of a directly affected person for:

118 (I) travel between the directly affected person's home and the location where the child

119 will be born or placed for adoption; or

120 (II) temporary living expenses during the pregnancy or confinement of the mother;

121 [~~and~~] or

122 (C) other than those included in Subsection (1)(a)(iii)(A) or (B), that are not made for  
123 the purpose of inducing the mother, parent, or legal guardian of a child to:

124 (I) place the child for adoption;

125 (II) consent to an adoption; or

126 (III) cooperate in the completion of an adoption.

127 (b) "[~~directly~~] Directly affected person" means a person who is:

128 (i) a parent or guardian of a minor when the minor is the mother or father of the child  
129 being adopted;

130 (ii) a dependant of:

131 (A) the mother or father of the child being adopted; or

132 (B) the parent or guardian described in Subsection (1)(b)(i); or

133 (iii) the spouse of the mother or father of the child being adopted.

134 (2) Except as provided in Subsection (3), a person is guilty of a third degree felony if  
135 the person[;]:

136 (a) while having custody, care, control, or possession of a child, sells, or disposes of  
137 the child, or attempts or offers to sell or dispose of[;] the child, for and in consideration of the  
138 payment of money or [~~other~~] another thing of value[;]; or

139 (b) offers, gives, or attempts to give money or another thing of value to a person, with  
140 the intent to induce or encourage a person to violate Subsection (2)(a).

141 (3) A person does not violate this section by paying or receiving payment for adoption  
142 related expenses, if:

143 (a) the expenses are paid as an act of charity; and

144 (b) [~~if~~] the payment is not made for the purpose of inducing the mother, parent, or legal  
145 guardian of a child to:

146 (i) place the child for adoption;

147 (ii) consent to an adoption; or

148 (iii) cooperate in the completion of an adoption.

149 Section 3. Section **78A-6-508** is amended to read:

150           **78A-6-508. Evidence of grounds for termination.**

151           (1) In determining whether a parent or parents have abandoned a child, it is prima facie  
152 evidence of abandonment that the parent or parents:

153           (a) although having legal custody of the child, have surrendered physical custody of the  
154 child, and for a period of six months following the surrender have not manifested to the child  
155 or to the person having the physical custody of the child a firm intention to resume physical  
156 custody or to make arrangements for the care of the child;

157           (b) have failed to communicate with the child by mail, telephone, or otherwise for six  
158 months;

159           (c) failed to have shown the normal interest of a natural parent, without just cause; or

160           (d) have abandoned an infant, as described in Subsection 78A-6-316(1).

161           (2) In determining whether a parent or parents are unfit or have neglected a child the  
162 court shall consider, but is not limited to, the following circumstances, conduct, or conditions:

163           (a) emotional illness, mental illness, or mental deficiency of the parent that renders the  
164 parent unable to care for the immediate and continuing physical or emotional needs of the child  
165 for extended periods of time;

166           (b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive  
167 nature;

168           (c) habitual or excessive use of intoxicating liquors, controlled substances, or  
169 dangerous drugs that render the parent unable to care for the child;

170           (d) repeated or continuous failure to provide the child with adequate food, clothing,  
171 shelter, education, or other care necessary for the child's physical, mental, and emotional health  
172 and development by a parent or parents who are capable of providing that care;

173           (e) [~~with regard to a child who is in the custody of the division, if~~ whether the parent  
174 is incarcerated as a result of conviction of a felony, and the sentence is of such length that the  
175 child will be deprived of a normal home for more than one year; or

176           (f) a history of violent behavior.

177           (3) A parent who, legitimately practicing the parent's religious beliefs, does not provide  
178 specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

179           (4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or  
180 unfit because of a health care decision made for a child by the child's parent unless the state or

181 other party to the proceeding shows, by clear and convincing evidence, that the health care  
182 decision is not reasonable and informed.

183 (b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to  
184 obtain a second health care opinion.

185 (5) If a child has been placed in the custody of the division and the parent or parents  
186 fail to comply substantially with the terms and conditions of a plan within six months after the  
187 date on which the child was placed or the plan was commenced, whichever occurs later, that  
188 failure to comply is evidence of failure of parental adjustment.

189 (6) The following circumstances constitute prima facie evidence of unfitness:

190 (a) sexual abuse, injury, or death of a sibling of the child, or of any child, due to known  
191 or substantiated abuse or neglect by the parent or parents;

192 (b) conviction of a crime, if the facts surrounding the crime are of such a nature as to  
193 indicate the unfitness of the parent to provide adequate care to the extent necessary for the  
194 child's physical, mental, or emotional health and development;

195 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement  
196 of the child; or

197 (d) the parent has committed, aided, abetted, attempted, conspired, or solicited to  
198 commit murder or manslaughter of a child or child abuse homicide.

199 Section 4. Section **78B-6-103** is amended to read:

200 **78B-6-103. Definitions.**

201 As used in this part:

202 (1) "Adoptee" means a person who has been legally adopted.

203 (2) "Adoption" means the judicial act which creates the relationship of parent and child  
204 where it did not previously exist and which permanently deprives a birth parent of parental  
205 rights.

206 (3) "Adoption service provider" means a:

207 (a) child-placing agency; or

208 (b) licensed counselor who has at least one year of experience providing professional  
209 social work services to:

210 (i) adoptive parents; or

211 (ii) birth parents.

212 (4) "Adult adoptee" means an adoptee who is 21 years of age or older.

213 (5) "Adult sibling" means a brother or sister of the adoptee, who is 21 years of age or  
214 older and whose birth mother or father is the same as that of the adoptee.

215 (6) "Birth parent" means a biological mother, a person whose paternity of a child is  
216 established, or an alleged father, who has been identified as the father of a child by the child's  
217 birth mother, and who has not denied paternity.

218 (7) "Bureau" means the Bureau of Vital Statistics within the Department of Health  
219 operating under Title 26, Chapter 2, Utah Vital Statistics Act.

220 (8) "Child-placing agency" means an agency licensed to place children for adoption  
221 under Title 62A, Chapter 4a, Part 6, Child Placing.

222 (9) "Cohabiting" means residing with another person and being involved in a sexual  
223 relationship with that person.

224 (10) "Division" means the Division of Child and Family Services, within the  
225 Department of Human Services, created in Section 62A-4a-103.

226 (11) "Extra-jurisdictional child-placing agency" means an agency licensed to place  
227 children for adoption by a district, territory, or state of the United States, other than Utah.

228 [~~(H)~~] (12) "Genetic and social history" means a comprehensive report, when  
229 obtainable, on an adoptee's birth parents, aunts, uncles, and grandparents, which contains the  
230 following information:

231 (a) medical history;

232 (b) health status;

233 (c) cause of and age at death;

234 (d) height, weight, and eye and hair color;

235 (e) ethnic origins;

236 (f) where appropriate, levels of education and professional achievement; and

237 (g) religion, if any.

238 [~~(I2)~~] (13) "Health history" means a comprehensive report of the adoptee's health  
239 status at the time of placement for adoption, and medical history, including neonatal,  
240 psychological, physiological, and medical care history.

241 [~~(I3)~~] (14) "Identifying information" means the name and address of a birth parent or  
242 adult adoptee, or other specific information which by itself or in reasonable conjunction with



243 other information may be used to identify that person.

244 ~~[(14)]~~ (15) "Licensed counselor" means a person who is licensed by the state, or  
245 another state, district, or territory of the United States as a:

246 (a) certified social worker;

247 (b) clinical social worker;

248 (c) psychologist;

249 (d) marriage and family therapist;

250 (e) professional counselor; or

251 (f) an equivalent licensed professional of another state, district, or territory of the  
252 United States.

253 ~~[(15)]~~ (16) "Parent," for purposes of Section 78B-6-119, means any person described in  
254 Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment  
255 for adoption is required under Sections 78B-6-120 through 78B-6-122.

256 ~~[(16)]~~ (17) "Unmarried biological father" means a person who:

257 (a) is the biological father of a child; and

258 (b) was not married to the biological mother of the child described in Subsection ~~[(16)]~~

259 (17)(a) at the time of the child's:

260 (i) conception; or

261 (ii) birth.

262 Section 5. Section **78B-6-105** is amended to read:

263 **78B-6-105. District court venue -- Jurisdiction of juvenile court -- Jurisdiction**  
264 **over nonresidents -- Time for filing.**

265 (1) Adoption proceedings shall be commenced by filing a petition with the clerk of the  
266 district court either:

267 (a) in the district where the person adopting resides, or if the person adopting is not a  
268 resident of this state, in the district where the child was born or in which the child-placing  
269 agency that has custody of the child is located; or

270 (b) with the juvenile court as provided in Subsection 78A-6-103(1).

271 (2) All orders, decrees, agreements, and notices in the proceedings shall be filed with  
272 the clerk of the court where the adoption proceedings were commenced under Subsection (1).

273 (3) A petition for adoption shall be filed within 30 days of the date the adoptee is

274 placed in the home of the petitioners for the purpose of adoption, unless:

275 (a) the time for filing has been extended by the court; or

276 (b) the adoption is arranged by a [~~licensed~~] child-placing agency in which case the  
277 agency may extend the filing time.

278 (4) (a) If a person whose consent for the adoption is required under Section 78B-6-120  
279 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state  
280 shall confer jurisdiction on the court in proceedings under this chapter as to such absent person,  
281 provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.

282 (b) The notice may not include the name of:

283 (i) the person or persons seeking to adopt the adoptee; or

284 (ii) an unmarried mother without her consent.

285 (5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction  
286 over the person served in the same manner and to the same extent as if the person served was  
287 served personally within the state.

288 (6) In the case of service outside the state, service completed not less than five days  
289 before the time set in the notice for appearance of the person served, shall be sufficient to  
290 confer jurisdiction.

291 (7) Computation of periods of time not otherwise set forth in this section shall be made  
292 in accordance with the Utah Rules of Civil Procedure.

293 Section 6. Section **78B-6-107** is amended to read:

294 **78B-6-107. Compliance with the Interstate Compact on Placement of Children --**  
295 **Compliance with the Indian Child Welfare Act.**

296 (1) In any adoption proceeding the petition for adoption shall state whether the child  
297 was born in another state and, if so, both the petition and the court's final decree of adoption  
298 shall state that the requirements of Title 62A, Chapter 4a, Part 7, Interstate Compact on  
299 Placement of Children, have been complied with.

300 (2) In any adoption proceeding involving an "Indian child," as defined in 25 U.S.C.  
301 Sec. 1903, a child-placing agency and the petitioners shall comply with the Indian Child  
302 Welfare Act, Title 25, Chapter 21, of the United States Code.

303 Section 7. Section **78B-6-124** is amended to read:

304 **78B-6-124. Persons who may take consents and relinquishments.**

305 (1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:

306 (a) a judge of any court that has jurisdiction over adoption proceedings~~[-or];~~

307 (b) subject to Subsection (6), a person appointed by [that] the judge [for the purpose of  
308 taking] described in Subsection (1)(a) to take consents or relinquishments; or

309 ~~[(b)]~~ (c) subject to Subsection (6), a person who is authorized by a [licensed]  
310 child-placing agency to take consents or relinquishments [so long as the signature is notarized  
311 or witnessed by two individuals who are not members of the birth mother's immediate family],  
312 if the consent or relinquishment grants legal custody of the child to a child-placing agency or  
313 an extra-jurisdictional child-placing agency.

314 (2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it  
315 shall be signed before:

316 (a) subject to Subsection (6), a person who is authorized by a child-placing agency to  
317 take consents or relinquishments, if the consent or relinquishment grants legal custody of the  
318 child to a child-placing agency or an extra-jurisdictional child-placing agency;

319 (b) subject to Subsection (6), a person authorized or appointed to take consents or  
320 relinquishments by a court of this state that has jurisdiction over adoption proceedings;

321 (c) a court that has jurisdiction over adoption proceedings in the state where the  
322 consent or relinquishment is taken; or

323 (d) a person authorized, under the laws of the state where the consent or relinquishment  
324 is taken, to take consents or relinquishments of a birth mother or adoptee.

325 (3) The consent or relinquishment of any other person or agency as required by Section  
326 78B-6-120 may be signed before a Notary Public or any person authorized to take a consent or  
327 relinquishment under Subsection (1) or (2).

328 (4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments,  
329 shall certify to the best of his information and belief that the person executing the consent or  
330 relinquishment has read and understands the consent or relinquishment and has signed it freely  
331 and voluntarily.

332 (5) A person executing a consent or relinquishment is entitled to receive a copy of the  
333 consent or relinquishment.

334 (6) A signature described in Subsection (1)(b), (1)(c), (2)(a), or (2)(b), shall be:

335 (a) notarized; or

336 (b) witnessed by two individuals who are not members of the birth mother's or the  
337 signatory's immediate family.

338 Section 8. Section **78B-6-128** is amended to read:

339 **78B-6-128. Preplacement adoptive evaluations -- Exceptions.**

340 (1) (a) Except as otherwise provided in this section, a child may not be placed in an  
341 adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive  
342 parent and the prospective adoptive home, has been conducted in accordance with the  
343 requirements of this section.

344 (b) Except as provided in Section 78B-6-131, the court may, at any time, authorize  
345 temporary placement of a child in a potential adoptive home pending completion of a  
346 preplacement adoptive evaluation described in this section.

347 (c) Subsection (1)(a) does not apply if a birth parent has legal custody of the child to be  
348 adopted and the prospective adoptive parent is related to that child as a step-parent, sibling by  
349 half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the  
350 evaluation is otherwise requested by the court. The prospective adoptive parent described in  
351 this Subsection (1)(c) shall, however, obtain the information described in Subsections (2)(a)  
352 and (b), and file that documentation with the court prior to finalization of the adoption.

353 (d) The required preplacement adoptive evaluation must be completed or updated  
354 within the 12-month period immediately preceding the placement of a child with the  
355 prospective adoptive parent. If the prospective adoptive parent has previously received custody  
356 of a child for the purpose of adoption, the preplacement adoptive evaluation must be completed  
357 or updated within the 12-month period immediately preceding the placement of a child with the  
358 prospective adoptive parent and after the placement of the previous child with the prospective  
359 adoptive parent.

360 (2) The preplacement adoptive evaluation shall include:

361 (a) criminal history record information regarding each prospective adoptive parent and  
362 any other adult living in the prospective home, prepared by a law enforcement agency based on  
363 a fingerprint criminal history check, no earlier than 18 months immediately preceding  
364 placement of the child;

365 (b) a report prepared by the Department of Human Services containing all information  
366 regarding reports and investigation of child abuse, neglect, and dependency, with respect to

367 each prospective adoptive parent and any other adult living in the prospective home, obtained  
368 no earlier than 18 months immediately preceding placement of the child, pursuant to waivers  
369 executed by those parties;

370 (c) an evaluation conducted by an expert in family relations approved by the court or a  
371 certified social worker, clinical social worker, marriage and family therapist, psychologist,  
372 professional counselor, or other court-determined expert in family relations, who is licensed to  
373 practice under the laws of this state or under the laws of the state where the prospective  
374 adoptive parent or other person living in the prospective adoptive home resides. The  
375 evaluation shall be in a form approved by the Department of Human Services. Neither the  
376 Department of Human Services nor any of its divisions may proscribe who qualifies as an  
377 expert in family relations or who may conduct evaluations pursuant to this Subsection (2); and

378 (d) if the child to be adopted is a child who is in the custody of any public child welfare  
379 agency, and is a child ~~[with]~~ who has a special [needs] need as defined in ~~[Subsection]~~ Section  
380 62A-4a-902[(2)], the preplacement evaluation must be conducted by the Department of Human  
381 Services or a ~~[licensed]~~ child-placing agency which has entered into a contract with the  
382 department to conduct the preplacement evaluations for children with special needs. Any fee  
383 assessed by the evaluating agency is the responsibility of the adopting parent or parents.

384 (3) The person or agency conducting the preplacement adoptive evaluation shall, in  
385 connection with the evaluation, provide the prospective adoptive parent or parents with  
386 literature approved by the Division of Child and Family Services relating to adoption, and  
387 including information relating to the adoption process, developmental issues that may require  
388 early intervention, and community resources that are available to the adoptive parent or parents.

389 (4) A copy of the preplacement adoptive evaluation shall be filed with the court.

390 Section 9. Section **78B-6-129** is amended to read:

391 **78B-6-129. Postplacement adoptive evaluations.**

392 (1) Except as provided in Subsections (2) and (3), a postplacement evaluation shall be  
393 conducted and submitted to the court prior to the final hearing in an adoption proceeding. The  
394 postplacement evaluation shall include:

- 395 (a) verification of the allegations of fact contained in the petition for adoption;  
396 (b) an evaluation of the progress of the child's placement in the adoptive home; and  
397 (c) a recommendation regarding whether the adoption is in the best interest of the

398 child.

399 (2) The exemptions from and requirements for evaluations, described in Subsections  
400 78B-6-128(1)(c), (2)(c), and (3), also apply to postplacement adoptive evaluations.

401 (3) Upon the request of the petitioner, the court may waive the postplacement adoptive  
402 evaluation, unless it determines that it is in the best interest of the child to require the  
403 postplacement evaluation. Except where the child to be adopted and the prospective parent are  
404 related as set forth in Subsection 78B-6-128(1)(c), the court may waive the postplacement  
405 adoptive evaluation for a child ~~[with]~~ who has a special [needs] need as defined in Section  
406 62A-4a-902.

407 Section 10. Section **78B-6-134** is amended to read:

408 **78B-6-134. Custody pending final decree.**

409 (1) Except as otherwise provided by the court, once a petitioner has received the  
410 adoptee into his home and a petition for adoption has been filed, the petitioner is entitled to the  
411 custody and control of the adoptee and is responsible for the care, maintenance, and support of  
412 the adoptee, including any necessary medical or surgical treatment, pending further order of the  
413 court.

414 (2) Once a child has been placed with, relinquished to, or ordered into the custody of a  
415 ~~[licensed]~~ child-placing agency for purposes of adoption, the agency shall have custody and  
416 control of the child and is responsible for his care, maintenance, and support. The agency may  
417 delegate the responsibility for care, maintenance, and support, including any necessary medical  
418 or surgical treatment, to the petitioner once the petitioner has received the child into his home.  
419 However, until the final decree of adoption is entered by the court, the agency has the right to  
420 the custody and control of the child.

421 Section 11. Section **78B-6-136** is amended to read:

422 **78B-6-136. Final decree of adoption -- Agreement by adoptive parent or parents.**

423 (1) Except as provided in Subsection (2), before the court enters a final decree of  
424 adoption:

425 (a) the adoptive parent or parents and the child being adopted shall appear before the  
426 appropriate court~~[-];~~ and ~~[an agreement shall be executed by]~~

427 (b) the adoptive parent or parents shall execute an agreement stating that the child shall  
428 be adopted and treated in all respects as ~~[his]~~ the parent's or parents' own lawful child.

429 (2) Except as provided in Subsection 78B-6-115(4), a court may waive the requirement  
430 [~~that the adoptive parent or parents and the child being adopted appear before the court~~]  
431 described in Subsection (1)(a) if:

432 (a) the adoption is not contested; [~~and~~]

433 (b) the adoptive parent or parents:

434 (i) execute an agreement stating that the child shall be adopted and treated in all  
435 respects as the parent's or parents' own lawful child;

436 (ii) have the agreement described in Subsection (2)(b)(i) notarized; and

437 (iii) file the agreement described in Subsection (2)(b)(i) with the court; and

438 [~~(b)~~] (c) all requirements of this chapter to obtain a final decree of adoption are  
439 otherwise complied with.

440 Section 12. Section **78B-6-143** is amended to read:

441 **78B-6-143. Nonidentifying health history of adoptee filed with bureau -- Limited**  
442 **availability.**

443 (1) Upon finalization of an adoption in this state, the person who proceeded on behalf  
444 of the petitioner for adoption, or a [~~licensed~~] child-placing agency if an agency is involved in  
445 the adoption, shall file a report with the bureau, in the form established by the bureau. That  
446 report shall include a detailed health history, and a genetic and social history of the adoptee.

447 (2) The report filed under Subsection (1) may not contain any information which  
448 identifies the adoptee's birth parents or members of their families.

449 (3) When the report described in Subsection (1) is filed, a duplicate report shall be  
450 provided to the adoptive parents.

451 (4) The report filed with the bureau under Subsection (1) shall only be available upon  
452 request, and upon presentation of positive identification, to the following persons:

453 (a) the adoptive parents;

454 (b) in the event of the death of the adoptive parents, the adoptee's legal guardian;

455 (c) the adoptee;

456 (d) in the event of the death of the adoptee, the adoptee's spouse, if the spouse is the  
457 parent or guardian of the adoptee's child;

458 (e) the adoptee's child or descendant;

459 (f) the adoptee's birth parent; and

460 (g) the adoptee's adult sibling.

461 (5) No information which identifies a birth parent or his family may be disclosed under  
462 this section.

463 (6) The actual cost of providing information under this section shall be paid by the  
464 person requesting the information.

465 Section 13. Section **78B-6-144** is amended to read:

466 **78B-6-144. Mutual-consent, voluntary adoption registry -- Procedures -- Fees.**

467 (1) The bureau shall establish a mutual-consent, voluntary adoption registry.

468 (a) Adult adoptees and birth parents of adult adoptees, upon presentation of positive  
469 identification, may request identifying information from the bureau, in the form established by  
470 the bureau. A court of competent jurisdiction or a child-placing agency [~~licensed under Title~~  
471 ~~62A, Chapter 4a, Part 6;~~] may accept that request from the adult adoptee or birth parent, in the  
472 form provided by the bureau, and transfer that request to the bureau. The adult adoptee or birth  
473 parent is responsible for notifying the bureau of any change in information contained in the  
474 request.

475 (b) The bureau may only release identifying information to an adult adoptee or birth  
476 parent when it receives requests from both the adoptee and his birth parent.

477 (c) After matching the request of an adult adoptee with that of at least one of his birth  
478 parents, the bureau shall notify both the adoptee and the birth parent that the requests have been  
479 matched, and disclose the identifying information to those parties. However, if that adult  
480 adoptee has a sibling of the same birth parent who is under the age of 21 years, and who was  
481 raised in the same family setting as the adult adoptee, the bureau shall not disclose the  
482 requested identifying information to that adult adoptee or his birth parent.

483 (2) (a) Adult adoptees and adult siblings of adult adoptees, upon presentation of  
484 positive identification, may request identifying information from the bureau, in the form  
485 established by the bureau. A court of competent jurisdiction or a child-placing agency  
486 [~~licensed under Title 62A, Chapter 4a, Part 6;~~] may accept that request from the adult adoptee  
487 or adult sibling, in the form provided by the bureau, and transfer that request to the bureau.  
488 The adult adoptee or adult sibling is responsible for notifying the bureau of any change in  
489 information contained in the request.

490 (b) The bureau may only release identifying information to an adult adoptee or adult



491 sibling when it receives requests from both the adoptee and his adult sibling.

492 (c) After matching the request of an adult adoptee with that of his adult sibling, if the  
493 bureau has been provided with sufficient information to make that match, the bureau shall  
494 notify both the adoptee and the adult sibling that the requests have been matched, and disclose  
495 the identifying information to those parties.

496 (3) Information registered with the bureau under this section is available only to a  
497 registered adult adoptee and his registered birth parent or registered adult sibling, under the  
498 terms of this section.

499 (4) Information regarding a birth parent who has not registered a request with the  
500 bureau may not be disclosed.

501 (5) The bureau may charge a fee for services provided under this section, limited to the  
502 cost of providing those services.

503 Section 14. **Coordinating H.B. 46 with S.B. 111 -- Technical amendments.**

504 If this H.B. 46 and S.B. 111, Revisor's Statute, both pass, it is the intent of the  
505 Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah  
506 Code database for publication by amending Subsection 78B-6-136(1) to read as follows:

507 "(1) Except as provided in Subsection (2), before a court enters a final decree of  
508 adoption:

509 (a) the adoptive parent or parents and the child being adopted shall appear before the  
510 appropriate court[;]; and [~~an agreement shall be executed by~~]

511 (b) the adoptive parent or parents shall execute an agreement stating that the child shall  
512 be adopted and treated in all respects as [~~his~~] the parent's or parents' own lawful child."

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**H.B. 46 1st Sub. (Buff) - Adoption and Termination of Parental Rights**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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